

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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| In re: |) | A.Q. Docket No. 06-0003 |
| |) | |
| Trent Wayne Ward and Michael Lee |) | Decision and Order by |
| McBarron d/b/a T&M Horse Company, |) | Reason of Default as to |
| |) | Trent Wayne Ward, d/b/a |
| Respondents. |) | T&M Horse Company |

This administrative proceeding was instituted by a complaint filed on December 5, 2005, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (frequently herein “APHIS” or “Complainant”). The complaint alleged that the respondents violated the Commercial Transportation of Equine for Slaughter Act, 7 U.S.C. § 1901 note (frequently herein “the Act”), and the regulations promulgated thereunder (9 C.F.R. § 88 et seq.).

The complaint seeks civil penalties authorized by section 903(c)(3) of the Act (7 U.S.C. § 1901 note) and 9 C.F.R. § 88.6.¹ The Rules of Practice applicable to this proceeding are 7 C.F.R. § 380.1 et seq. and 7 C.F.R. § 1.130 et seq.

The Hearing Clerk sent to respondent Trent Wayne Ward d/b/a T&M Horse Company (frequently herein “respondent Ward”) a copy of the complaint, by certified mail, return receipt requested, on December 5, 2005. Respondent Ward was informed in the complaint and in the

¹ The Secretary of Agriculture is authorized to assess civil penalties of up to \$5,000 per violation of the regulations, and each equine transported in violation of the regulations will be considered a separate violation.

Hearing Clerk's accompanying letter of service, that an answer to the complaint should be filed with the Hearing Clerk within 20 days of receipt, pursuant to the Rules of Practice, and that failure to answer any allegation in the complaint would constitute an admission of that allegation and waiver of a hearing. 7 C.F.R. § 1.136.

The complaint that was mailed to respondent Ward on December 5, 2005 was returned to the Hearing Clerk on January 10, 2006, marked "Unclaimed" by the U.S. Postal Service. Accordingly, the Hearing Clerk's office re-mailed the complaint to respondent Trent Wayne Ward d/b/a T&M Horse Company at the same address via regular mail on January 10, 2006. Therefore, respondent Ward is deemed to have been served with the complaint on January 10, 2006.² Respondent Ward's answer was thus due by January 30, 2006, twenty days after service of the complaint. 7 C.F.R. § 1.136(a).

Respondent Trent Wayne Ward d/b/a T&M Horse Company never filed an answer to the complaint. The Hearing Clerk sent to respondent Trent Wayne Ward d/b/a T&M Horse Company a "no answer" letter by regular mail on February 1, 2006. Further, the Hearing Clerk sent to respondent Trent Wayne Ward d/b/a T&M Horse Company a copy of the "Proposed Default Decision and Order", a copy of the "Motion for Adoption of Proposed Default Decision and Order", and the Hearing Clerk service letter dated March 13, 2006, by certified mail, return receipt requested, on March 13, 2006, which were signed for and delivered on behalf of, and thereby served upon, respondent Trent Wayne Ward d/b/a T&M Horse Company on March 16, 2006.

² Section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)) states that any document that is initially sent to a person by certified mail to make that person a party respondent in a proceeding but is returned marked by the postal service as unclaimed shall be deemed to have been received by said person on the date it is re-mailed by ordinary mail to the same address.

Accordingly, the material allegations in the complaint, which are admitted by the respondent's failure to file an answer (7 C.F.R. §1.136(c)), are adopted and set forth in this Decision and Order as the Findings of Fact. This Decision and Order is issued pursuant to section 1.139 of the Rules of Practice. 7 C.F.R. § 1.139.³

Findings of Fact

1. Respondent Trent Wayne Ward d/b/a T&M Horse Company, frequently hereinafter referred to as respondent Ward, owned and operated T&M Horse Company in the State of Texas and has a mailing address of 1037 Lakeview Circle, Kaufman, Texas 75142. Respondent Ward is a commercial slaughter horse buyer who has been in the business of buying and selling horses, as well as other livestock, most of his adult life.

2. (a) On or about June 10, 2003, respondent Ward shipped 43 horses in commercial transportation from Southwest Livestock to Dallas Crown for slaughter without applying a USDA back tag to each horse in the shipment, in violation of 9 C.F.R. § 88.4(a)(2).

(b) On or about June 10, 2003, respondent Ward shipped 43 horses in commercial transportation from Southwest Livestock to Dallas Crown for slaughter without the required owner-shipper certificate, VS Form 10-13, in violation of 9 C.F.R. § 88.4(a)(3)(i-x).

(c) On or about June 10, 2003, respondent Ward shipped 43 horses in commercial transportation from Southwest Livestock to Dallas Crown for slaughter. The shipment included at least seven (7) stallions but respondent Ward did not load the horses on the conveyance so that

³ Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) or to deny or otherwise respond to an allegation of the complaint shall be deemed an admission of the allegations in the complaint. Furthermore, since the admission of the allegations in the complaint constitutes a waiver of hearing (7 C.F.R. § 1.139) and respondent's failure to file an answer is deemed such an admission pursuant to the Rules of Practice, respondent's failure to answer is likewise deemed a waiver of hearing.

each stallion was completely segregated from the other horses to prevent it from coming into contact with any other horse on the conveyance, in violation of 9 C.F.R. § 88.4(a)(4)(ii).

3. (a) On or about August 25, 2003, respondent Ward shipped 30 horses from Southwest Livestock to Dallas Crown for slaughter but did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) the owner/shipper's address and telephone number were not properly completed, in violation of 9 C.F.R. § 88.4(a)(3)(i); (2) the license plate number of the conveyance was not properly listed, in violation of 9 C.F.R. § 88.4(a)(3)(iv); and (3) the time the horses were loaded onto the conveyance was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ix). Also, one of the horses, a palomino gelding with USDA back tag # USAZ 0691, had an old injury to its left hind foot such that it could not bear weight on all four limbs, yet respondent did not describe this pre-existing injury on the VS 10-13, in violation of 9 C.F.R. § 88.4(a)(3)(viii).

(b) On or about August 25, 2003, respondent Ward shipped 30 horses from Southwest Livestock to Dallas Crown for slaughter. One of the horses, a palomino gelding with USDA back tag # USAZ 0691, had an old injury to its left hind foot such that it could not bear weight on all four limbs, yet respondent Ward shipped the horse in commercial transportation to the slaughtering facility in spite of its injuries. By reason of the above, the injured horse was in obvious physical distress, yet respondent Ward failed to obtain veterinary assistance as soon as possible from an equine veterinarian, in violation of 9 C.F.R. § 88.4(b)(2).

(c) On or about August 25, 2003, respondent Ward shipped 30 horses from Southwest Livestock to Dallas Crown for slaughter. One of the horses, a palomino gelding with USDA back tag # USAZ 0691, had an old injury to its left hind foot such that it could not bear weight

on all four limbs, yet respondent Ward shipped the horse in commercial transportation to the slaughtering facility in spite of its injuries. By transporting it in this manner, respondent Ward failed to handle the injured horse as expeditiously and carefully as possible in a manner that did not cause it unnecessary discomfort, stress, physical harm or trauma, in violation of 9 C.F.R. § 88.4(c).

4. On or about March 14, 2004, respondent Ward shipped 15 horses from Southwest Livestock to Dallas Crown for slaughter but did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: the prefix for each horse's USDA back tag number was not recorded properly, in violation of 9 C.F.R. § 88.4(a)(3)(vi).

5. On or about March 21, 2004, respondent Ward shipped 40 horses from Southwest Livestock to Dallas Crown for slaughter but did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: it did not indicate the breed or type of each horse, one of the physical characteristics that could be used to identify each horse, in violation of 9 C.F.R. § 88.4(a)(3)(v).

6. On or about August 23, 2004, respondent Ward shipped 10 horses from Southwest Livestock to Dallas Crown for slaughter but did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) the prefix for each horse's USDA back tag number was not recorded properly, in violation of 9 C.F.R. § 88.4(a)(3)(vi); and (2) the time the horses were loaded onto the conveyance was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

Conclusions

1. The Secretary of Agriculture has jurisdiction.

2. At all times material herein, the conduct of respondent Trent Wayne Ward d/b/a T&M Horse Company while in possession of horses for the purpose of transporting them to slaughter was regulated under 9 C.F.R. § 88 et seq.

3. Violations of the regulations constitute violations of the Act. By reason of the Findings of Fact set forth above, respondent Trent Wayne Ward d/b/a T&M Horse Company repeatedly violated the Commercial Transportation of Equine for Slaughter Act. 7 U.S.C. § 1901 note.

Order

1. The provisions of this Order shall be effective on the first day after this decision becomes final.

2. Respondent Trent Wayne Ward d/b/a T&M Horse Company is hereby assessed a civil penalty of **\$21,450.00** (twenty-one thousand four hundred fifty dollars). Respondent Trent Wayne Ward d/b/a T&M Horse Company shall pay this penalty by certified check(s), cashier's check(s), or money order(s), made payable to the order of "**Treasurer of the United States**" and shall indicate that payment is in reference to **A.Q. Docket No. 06-0003**. Respondent Ward's certified check(s), cashier's check(s), or money order(s) shall be forwarded within **60** (sixty) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

3. So long as Respondent Ward pays his civil penalty in full as required, Respondent Ward's civil penalty shall be reduced by the amount of civil penalty paid in this case by the end

of calendar year 2007 by the remaining respondent in this case, Respondent Michael Lee McBarron d/b/a T&M Horse Company.

Finality

This Decision and Order shall have the same force and effect as if entered after a full hearing and shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 4th day of May 2006

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Bldg Room 1031
1400 Independence Ave SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

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SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time

for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145